



Paper No.

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In re Application of
Mark Treemblay
Application No. 08/662,582
Filed: June 11, 1996
Attorney Docket No. M-387-US

DECISION GRANTING
PETITION

In re Application of
Mark Treemblay
Application No. 09/583,097
Filed: August 2, 1999
Attorney Docket No. SP-1391 US

This is a decision on the petition filed July 25, 2000, requesting that a Continued Prosecution Application (CPA) filed August 2, 1999, based on prior application No. 08/662,582 be treated as an application under 37 CFR 1.53(b) and be accorded a filing date of August 2, 1999.

The request for a CPA based on prior application No. 08/662,582 was deposited on August 2, 1999. However, the issue fee was paid in the prior application on June 14, 1999. A CPA must be filed before payment of the issue fee in the prior application. See 37 CFR 1.53(d)(1)(ii)(A). Since the prior application has issued as a patent, the CPA request cannot be processed as a proper CPA.

The present petition (including the requisite petition fee) requests that the request for a CPA be treated as a continuation application filed under 37 CFR 1.53(b). A copy of a specification and drawings, *inter alia*, were provided by Attorney Edward C. Kwok on August 4, 2000, in response to a request by the undersigned for a true copy of the prior complete application. However, there was no signed declaration under 37 CFR 1.63 included therewith. A copy of the declaration from the prior application was provided, via facsimile transmission, on August 15, 2000.

The petition is granted.

The continuation application under 37 CFR 1.53(b) has been assigned application No. 09/583,097. All further correspondence concerning the continuation application filed on August 2, 1999, should be directed to application No. 09/583,097.

In view of this decision, the CPA request filed on August 2, 1999, and the petition filed on July 25, 2000, have been removed

from the file of application No. 08/662,582 and placed in the file of application No. 09/583,097.

The \$760.00 CPA filing fee paid in Application No. 08/662,582 will be applied to Application No. 09/583,097.

Thereafter Application No. 08/662,582 will be returned to the files repository.

Application No. 09/583,097 will then be returned to Initial Patent Examination Division for processing as a continuation application under 37 CFR 1.53(b), not as a CPA under 37 CFR 1.53(d), with a filing date of August 2, 1999, using the copy of the specification, drawings filed August 4, 2000 and the declaration supplied August 15, 2000.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 305-9285.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Conferee: ⁷¹³F.A. Silverberg